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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 James H. Hayes,

7 Plaintiff,

8 v.

9 City of Las Vegas, et al.,

10 Defendants.  
11

Case No. 2:20-cv-2122-RFB-BNW

**ORDER**

12 Plaintiff James Hayes brings a lawsuit under 42 U.S.C. § 1983 alleging several  
13 unconstitutional acts and torts by several defendants stemming from an unlawful arrest and  
14 prosecution. ECF No. 1-1) Hayes is currently incarcerated and part of his claims seek redress  
15 from governmental entities and its officers. As a result, this court must conduct a preliminary  
16 screening pursuant to 28 U.S.C. § 1915A(a).

17 **I. SCREENING**

18 In its review, the court must identify any cognizable claims and dismiss any claims that  
19 are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary  
20 relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). In  
21 addition to the screening requirements under § 1915A, the Prison Litigation Reform Act requires  
22 a federal court to dismiss a prisoner's claim if it "fails to state a claim on which relief may be  
23 granted." 28 U.S.C. § 1915(e)(2); *accord* Fed. R. Civ. Proc. 12(b)(6).

24 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
25 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
26 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient  
27 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See*  
28 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and

1 may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in  
2 support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908  
3 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of  
5 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*  
6 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).  
7 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
8 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
9 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*  
10 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se  
11 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s  
12 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 In his complaint Hayes alleges that on January 26, 2019 he was arrested for Attempted  
14 Burglary based on an incident involving the entry (or near entry) into the room of James McGrath  
15 at the Mirage Hotel and Casino. Hayes’ complaint alleges McGrath had provided him the key to  
16 enter the room. Nevertheless, McGrath and security officers at the Mirage gave false information  
17 to the police resulting in the initiation of a criminal case.

18 Hayes explains that during the preliminary hearing in justice court, McGrath testified that  
19 Hayes was not involved in the January 26, 2019 incident. Despite this testimony, and several  
20 other deficiencies in proof, the judge found probable cause and the case was bound over to district  
21 court.

22 It appears that after the preliminary hearing, Hayes may have entered into a plea  
23 agreement, which he alleges was later breached. Given this, it is not clear what he means when he  
24 states that “criminal proceedings terminated in such a manner as to indicate his innocence short of  
25 a trial on the merits.” That is, it is unclear whether he has pleaded guilty to an offense or whether  
26 the criminal proceedings were terminated. He is also incarcerated, but it is not clear whether his  
27 incarceration stems from this case or not.  
28

1 Based on these facts he names several defendants and brings the following claims in this  
2 42 U.S.C. § 1983 action: (1) malicious prosecution, (2) false arrest and false imprisonment, (3)  
3 Fourteenth Amendment denial of equal protection and due process, (4) Intentional Infliction of  
4 Emotional Distress (IIED), (5) failure to properly train and ratification of unconstitutional  
5 conduct, and (6) negligent hiring retention, supervision, and training.

6 If a § 1983 case seeking damages alleges constitutional violations that would necessarily  
7 imply the invalidity of a conviction or sentence, the prisoner must establish that the underlying  
8 sentence or conviction has been invalidated on appeal, by habeas petition, or through a similar  
9 proceeding. *See Heck v. Humphrey*, 512 U.S. 477, 483-87 (1994). Under *Heck*, a party who was  
10 convicted of a crime is barred from bringing a suit under § 1983 if a judgment in favor of that  
11 party would necessarily imply the invalidity of the conviction or sentence. *See Whitaker v.*  
12 *Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007) (citing *Heck*, 512 U.S. at 114). *Heck* also applies to  
13 pending criminal charges. *Harvey v. Waldron*, 210 F.3d 1008, 1014 (9th Cir. 2000)(overruled on  
14 other grounds).

15 The essence of all of Hayes' claims is that certain defendants provided false information  
16 to the police and that the criminal case should have never been brought in the first place and, in  
17 any event, dismissed at the preliminary hearing stage. But it is not clear whether the criminal  
18 charges that stem from these facts are currently pending, whether Hayes has been convicted, or  
19 what happened with that case. As mentioned above, if the criminal charges are currently pending,  
20 then Hayes is barred from asserting constitutional claims under § 1983. If the case has resulted in  
21 a conviction, Hayes must establish that the conviction has been invalidated on appeal, by habeas  
22 petition, or through a similar proceeding. *See Heck*, 512 U.S. at 483-87.

23 Finally, the Court declines to screen plaintiff's state-law tort claims until it is clear that  
24 plaintiff has viable § 1983 claims. Federal Courts are courts of limited jurisdiction, so "they  
25 possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins.*  
26 *Co. of Am.*, 511 U.S. 375, 377 (1994). The two primary bases for the Court's subject-matter  
27 jurisdiction are federal-question jurisdiction and diversity jurisdiction. 28 U.S.C. §§ 1331, 1332.  
28 The parties are not diverse because both plaintiff and Clark County are citizens of the same state.

1 *Moor v. Alameda Cnty.*, 411 U.S. 693, 717–18 (1973) ("a political subdivision of a State . . . is a  
2 citizen of the State for diversity purposes.") (citations omitted). And the only basis for federal-  
3 question jurisdiction appears to be the § 1983 claims, which the Court has already found are not  
4 yet viable. Accordingly, although the *Heck* bar does not apply to plaintiff's state-law claims, the  
5 Court will not screen them until plaintiff's federal claims are viable. *See* 28 U.S.C. § 1367(c)(3)  
6 ("The district court[] may decline to exercise supplemental jurisdiction" if it "has dismissed all  
7 claims over which it has original jurisdiction"); *Sanford v. Memberworks, Inc.*, 625 F.3d 550, 561  
8 (9th Cir. 2010) ("[I]n the usual case in which all federal-law claims are eliminated before trial, the  
9 balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy,  
10 convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the  
11 remaining state-law claims.").

## 12 **II. CONCLUSION**

13 IT IS THEREFORE ORDERED that the Clerk of Court is kindly directed to detach and  
14 separately docket ECF No. 1-1 as a complaint.

15 IT IS FURTHER ORDERED that Hayes's complaint is dismissed with leave to amend so  
16 that he can clarify the questions above. Hayes has 60 days to amend the complaint. If no  
17 amended complaint is filed, the court may recommend that the case be dismissed.

18 DATED: July 19, 2021.

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20 Brenda Weksler  
21 United States Magistrate Judge  
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